IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.4063/1995
(State of Raj. Vs. Sohan Lal & Anr.)

Date of order : 3.12.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. Sanjay Mathur, for respondents.

Heard learned Dy. Government Advocate.

By way of filing this writ petition, the petitioner – Executive Engineer, Public Works Deptt., Division Rajsamand has challenged the award dated 8.2.1995 (Annexure-5) passed by Judge, Industrial Dispute Tribunal & Labour Court, Udaipur whereby the Judge, Labour Court, Udaipur quashed the termination order of the non-petitioner workman and passed an order for his reinstatement.

As per the facts narrated in the writ

petition, an industrial dispute was raised by the non-petitioner workman before the conciliation officer, Udaipur with regard to his termination from service, which is said to be retrenchment in accordance with the provisions of the Industrial Disputes Act, 1947 (hereinafter “the Act” only). After failure of the conciliation proceedings, the matter was sent to the appropriate Government for making reference to the Judge, Labour Court under Section 10 (1) of the Act. The appropriate Government made a reference to the Judge, Labour Court, Udaipur that “whether the termination of the respondent No.1 by Assistant Engineer, PWD, Nathdwara is just and valid and if not then to what relief the workman is entitled for.”

After reference, notices were issued to the petitioner Department as well as to the non-petitioner-workman. The workman filed his claim before the Judge, Labour Court, Udaipur in which it is stated that he was initially appointed by PWD, Nathdwara on the post of 'mistri' on 21.12.1980. It is further stated that he was allowed to work till 1.8.1982. Thereafter, due to an accident he remained absent for sometime because he received fracture at right hand. He has also claimed for compensation and amount of his due salary However, the petitioner-Department retrenched the services of the workman w.e.f. 31.8.1982. According to the workman he worked for more then 576 days, therefore, before terminating

his services, the provisions of Section 25-F of the Act was to be complied with but his services were retrenched without following the provisions of the Adct.

In reply to the claim filed by the respondent-workman, the petitioner Department filed written statement in which it is specifically mentioned that petitioner was employed in famine work and payment was made to him under famine work, which was sanctioned by the Collector and Department was only executing agency. In fact, the Collector was principal employer, therefore, no relief can be granted to the workman-claimant. However, the Judge, Labour Court after considering the claim, written statement as well as the evidence on record, passed an award in favour of the workman and it was ordered that retrenchment of the workman from service was completely in violation of the provisions of Section 25-F of the Act. It was also observed in the award that the non-petitioner was workman and employed under the Work Charge Establishment. Therefore, the petitioner-department has prayed for quashing the award impugned.

Learned Dy. Govt. Advocate vehemently argued that by way of pleading evidence before the Labour Court on affidavit, it is establishment by the department that the workman was employed in connection

with the famine relief work and in the event of termination of service of any employee, employed in famine relief work, there is no question of application of provisions of Section 25-F of the Act. According to learned Dy. Govt. Advocate, the finding recorded by Judge, Labour Court is totally erroneous and perverse.

On the other hand, it is clear from the award impugned that the Judge, Labour Court after considering the main fact that the workman's attendance was maintained in the register prepared by the PWD and contention of the petitioner department was not accepted on the ground that in famine relief work which is said to be commenced by the Collector, the attendance was to be maintained in the muster roll but no muster roll was produced in the Court.

In my opinion while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, certainly this Court will not sit as appellate authority to re-appreciate the evidence. Apparently, it is clear from the award itself that no documentary evidence was produced by the petitioner Department with regard to employment of the non-petitioner No.1 in famine relief work. Therefore, such finding recorded by Judge, Labour Court does not require any interference by this Court. Further, it is not disputed by the petitioner-Department that the workman

did not work for more than 240 days.

In the aforesaid circumstances, no case interference in the award impugned is made out. Accordingly, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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